

## § 771.131

its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (*i.e.*, draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for major new fixed guideway capital projects proposed for FTA funding if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

## 23 CFR Ch. I (4–1–14 Edition)

(3) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

[52 FR 32660, Aug. 28, 1987, as amended at 70 FR 24470, May 9, 2005; 74 FR 12530, Mar. 24, 2009]

### § 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

### § 771.133 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The Administration's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

[52 FR 32660, Aug. 28, 1987, as amended at 74 FR 12530, Mar. 24, 2009]

### § 771.137 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

## Federal Highway Administration, DOT

## § 772.5

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

### § 771.139 Limitations on actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the FEDERAL REGISTER indicating that such decisions are final within the meaning of 23 U.S.C. 139(l). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.<sup>6</sup> This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

[74 FR 12530, Mar. 24, 2009]

## PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

772.1 Purpose.

772.3 Noise standards.

772.5 Definitions.

772.7 Applicability.

<sup>6</sup>The FHWA published a detailed discussion of US DOT's interpretation of 23 U.S.C. 139(l), together with information applicable to FHWA projects about implementation procedures for 23 U.S.C. 139(l), in appendix E to the "SAFETEA-LU Environmental Review Process: Final Guidance," dated November 15, 2006. The implementation procedures in appendix E apply only to FHWA projects. The section 6002 guidance, including appendix E, is available at <http://www.fhwa.dot.gov/>, or in hard copy by request.

772.9 Traffic noise prediction.

772.11 Analysis of traffic noise impacts.

772.13 Analysis of noise abatement.

772.15 Federal participation.

772.17 Information for local officials.

772.19 Construction noise.

### TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA

AUTHORITY: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104-59, 109 Stat. 568, 605; 49 CFR 1.48(b).

SOURCE: 75 FR 39834, July 13, 2010, unless otherwise noted.

### § 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare and livability, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

### § 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(1). All highway projects which are developed in conformance with this regulation shall be deemed to be in accordance with the FHWA noise standards.

### § 772.5 Definitions.

*Benefited receptor.* The recipient of an abatement measure that receives a noise reduction at or above the minimum threshold of 5 dB(A), but not to exceed the highway agency's reasonableness design goal.

*Common Noise Environment.* A group of receptors within the same Activity Category in Table 1 that are exposed to similar noise sources and levels; traffic volumes, traffic mix, and speed; and topographic features. Generally, common noise environments occur between two secondary noise sources, such as interchanges, intersections, crossroads.

*Date of public knowledge.* The date of approval of the Categorical Exclusion